

FILED

February 28, 2022

CLERK, U.S. DISTRICT COURT
WESTERN DISTRICT OF TEXAS

BY: Michael Trujillo
DEPUTY

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
EL PASO DIVISION

ROBERT K. HUDNALL)	
Plaintiff)	
v.)	
)	
)	Case No. 3:22-cv-00036-KC
STATE OF TEXAS, CITY OF EL PASO,)	
TEXAS, JUDGE SERGIO ENRIQUEZ)	
ALEJANDRO C. RAMIREZ, TYRONE SMITH,)	
DBA SMITH AND RAMIREZ RESTORATION)	
LLC, GUY BLUFF, AMERICAN ARBITRATION)	
ASSOCIATION AND EVANSTON INSURANCE)	
COMPANY)	
Defendants)	

MOTION FOR DECLARATORY JUDGMENT

Comes now the Plaintiff in the above styled action and makes this, his Motion for a Declaratory Judgment, showing this court as follows:

1. Under the Provisions of Federal Rules of Civil Procedure, Rule 57, a declaratory judgment is appropriate when it will terminate the controversy giving rise to the proceeding.
2. The elements of a Declaratory Judgment are as follows:
 - Disputes to be definite and concrete,
 - Touching on the legal relation of the parties having adverse legal interests,
 - Real and substantial
 - Admit of specific relief through a decree of a conclusive nature.
3. The Defendants, Alejandro C. Ramirez and Tyrone Smith, dba as Smith and Ramirez Restoration LLC (hereinafter Roofers) contracted to install a roof for Plaintiff. The installation was not proper and failed to meet code, but the Roofers were still paid 125% of their invoice. They wanted still more.

4. Their own surety company, Old Republic Surety Company sued Plaintiff in County Court of Law #3, a court of competent jurisdiction asking to forfeit the surety bond as the work did not meet code. Also included was an allegation that the inspection conducted by the city of El Paso was performed from the desk of the inspector and was not a physical inspection.
5. Defendant Roofers filed an intervenor, and their attorney took part in the hearing. He never denied the roof failed to meet code and did not deny that the inspection was done from the inspector's desktop and was not a physical inspection.
6. The County Court of Law #3 issued a final order that the bond be forfeited. At that point, the contract between Plaintiff and Defendant roofers was void as they were no longer covered by a surety bond as required by City ordinance.
7. Additionally, the City of El Paso's Department of Planning and Inspections conducted an actual physical inspection and found that the roof did not meet code. A later letter (submitted by Plaintiff in his original petition,) superseded the desktop pass issued at the behest of the Defendant Roofers.
8. Under the legal principles of Res Judicata and Collateral Estoppel, the decision of the County Court of Law #3 answered for all time that the roof in question failed to meet code.
9. In spite of the final decision of the County Court of Law #3 and the letters issued by the City of El Paso's Department of Planning and Inspection confirming that the roofer failed to meet code (all of which were included in Plaintiff's original petition) and the document attached as Exhibit A issued by a firm that does roof inspections for a federal agency Defendant Roofers and their numerous attorneys have continued to claim that the roof did

passed and have kept litigation going for almost 8 years in order to be unjustly enriched at Plaintiff's expense.

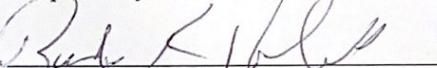
10. A Declaratory judgment that the roof did in fact fail to meet code would terminate the controversy as it would end the continual attempts by Defendant Roofers to be unjustly enriched at Plaintiff's expense.

11. Based upon the evidence that Plaintiff has submitted, there is no support for Defendant Roofer's premise that the roof passed inspection – therefore, Plaintiff is entitled to a declaratory judgment that the roof failed to pass inspection and failed to meet code.

12. Plaintiff would show that he has filed numerous motions that the Court has seen fit to ignore, to include one based on Judgment on the Pleadings wherein he showed that there is no legal basis for their contention that the roof passed inspection and met local code. He has also asked for numerous hearings and been ignored.

THEREFORE, based on the foregoing, Plaintiff does ask this Court to issue a Declaratory Judgment that the roof in question failed meet local code as found by the County Court of Law #3, a Court of Competent Jurisdiction, and the City of El Paso's Department of Planning and Inspection and the Independent Inspection firm's report attached or give him leave to appeal the issue to the 5th Circuit based on the continuing violation of his right to due process of law and denial of meaningful access to the Court.

Respectfully submitted,



ROBERT K. HUDNALL
915-478-1114

CERIFICATE OF SERVICE

CERTIFICATE OF SERVICE

I, Robert K. Hudnall, do hereby certify that a true and correct copy of the above Motion for Declaratory Judgment was served on each defendant through their attorneys via email on this 28th day of February 2022. The served attorneys are:

Defendants State of Texas and Judge Sergio Enriquez
Scot M. Graydon
Scot.Graydon@oag.texas.gov

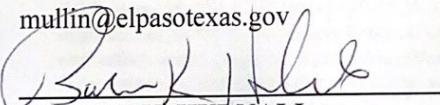
Defendants Guy Bluff and AAA
Raymond D. Martinez
raymond@martinezlawyers.com

Defendant Evanston Insurance Company
Stephen Melendi
stephenm@tbmmlaw.com

Defendant Alejandro C. Ramirez
James A. Martinez
martinez@jmeplaw.com

Defendant Tyrone Smith
James A. Martinez
martinez@jmeplaw.com

Defendant City of El Paso
Karla M. Nieman, City Attorney c/o Abbie Mullin Assistant City Attorney
mullin@elpasotexas.gov


ROBERT K. HUDNALL

Report IdentificationTimothy A. Sank, 915-346-9553, timsproinspection@sbcglobal.net

I=Inspected NI=Not Inspected NP=Not Present D=Deficient

I	NI	NP	D
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PROPERTY INSPECTION REPORTRobert Hudnall2/14/22

Name of Client

Date of Inspection

297 Puesta Del Sol, El Paso TX 79912

Address of Inspected Property

TIMOTHY ALAN SANK

7144

Name of Inspector

TREC License #

PURPOSE OF INSPECTION

A real estate inspection is a visual survey of a structure and a basic performance evaluation of the systems and components of a building. It provides information regarding the general condition of a residence at the time the inspection was conducted. *It is important* that you carefully read ALL of this information. Ask the inspector to clarify any items or comments that are unclear.

RESPONSIBILITY OF THE INSPECTOR

This inspection is governed by the Texas Real Estate Commission (TREC) Standards of Practice (SOPs), which dictates the minimum requirements for a real estate inspection.

The inspector IS required to:

- use this Property Inspection Report form for the inspection;
- inspect only those components and conditions that are present, visible, and accessible at the time of the inspection;
- indicate whether each item was inspected, not inspected, or not present;
- indicate an item as Deficient (D) if a condition exists that adversely and materially affects the performance of a system or component OR constitutes a hazard to life, limb or property as specified by the SOPs; and
- explain the inspector's findings in the corresponding section in the body of the report form.

The inspector IS NOT required to:

- identify all potential hazards;
- turn on decommissioned equipment, systems, utilities, or apply an open flame or light a pilot to operate any appliance;
- climb over obstacles, move furnishings or stored items;
- prioritize or emphasize the importance of one deficiency over another;
- provide follow-up services to verify that proper repairs have been made; or
- inspect system or component listed under the optional section of the SOPs (22 TAC 535.233).

RESPONSIBILITY OF THE CLIENT

While items identified as Deficient (D) in an inspection report DO NOT obligate any party to make repairs or take other actions, in the event that any further evaluations are needed, it is the responsibility of the client to obtain further evaluations and/or cost estimates from qualified service professionals regarding any items reported as Deficient (D). It is recommended that any further evaluations and/or cost estimates take place prior to the expiration of any contractual time limitations, such as option periods.

Please Note: Evaluations performed by service professionals in response to items reported as Deficient (D) on the report may lead to the discovery of additional deficiencies that were not present, visible, or accessible at the time of the inspection. Any repairs made after the date of the inspection may render information contained in this report obsolete or invalid.

REPORT LIMITATIONS

This report is provided for the benefit of the named client and is based on observations made by the named inspector on the date the inspection was performed (indicated above).

ONLY those items specifically noted as being inspected on the report were inspected.

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This inspection IS NOT:

- a technically exhaustive inspection of the structure, its systems, or its components and may not reveal all deficiencies;
- an inspection to verify compliance with any building codes;
- an inspection to verify compliance with manufacturer's installation instructions for any system or component and

DOES NOT imply insurability or warrantability of the structure or its Components.

NOTICE CONCERNING HAZARDOUS CONDITIONS, DEFICIENCIES, AND CONTRACTUAL AGREEMENTS

Conditions may be present in your home that did not violate building codes or common practices in effect when the home was constructed but are considered hazardous by today's standards. Such conditions that were part of the home prior to the adoption of any current codes prohibiting them may not be required to be updated to meet current code requirements. However, if it can be reasonably determined that they are present at the time of the inspection, the potential for injury or property loss from these conditions is significant enough to require inspectors to report them as Deficient (D). Examples of such hazardous conditions include:

- malfunctioning, improperly installed, or missing ground fault circuit protection (GFCI) devices and arc-fault (AFCI) devices;
- ordinary glass in locations where modern construction techniques call for safety glass;
- malfunctioning or lack of fire safety features such as smoke alarms, fire-rated doors in certain locations, and functional
 - emergency escape and rescue openings in bedrooms;
- malfunctioning carbon monoxide alarms;
- excessive spacing between balusters on stairways and porches;
- improperly installed appliances;
- improperly installed or defective safety devices;
- lack of electrical bonding and grounding; and
- lack of bonding on gas piping, including corrugated stainless steel tubing (CSST).

Please Note: items identified as Deficient (D) in an inspection report DO NOT obligate any party to make repairs or take other actions. The decision to correct a hazard or any deficiency identified in an inspection report is left up to the parties to the contract for the sale or purchase of the home.

This property inspection report may include an inspection agreement (contract), addenda, and other information related to property conditions.

INFORMATION INCLUDED UNDER "ADDITIONAL INFORMATION PROVIDED BY INSPECTOR", OR PROVIDED AS AN ATTACHMENT WITH THE STANDARD FORM, IS NOT REQUIRED BY THE COMMISSION AND MAY CONTAIN CONTRACTUAL TERMS BETWEEN THE INSPECTOR AND YOU, AS THE CLIENT. THE COMMISSION DOES NOT REGULATE CONTRACTUAL TERMS BETWEEN PARTIES. IF YOU DO NOT UNDERSTAND THE EFFECT OF ANY CONTRACTUAL TERM CONTAINED IN THIS SECTION OR ANY ATTACHMENTS, CONSULT AN ATTORNEY.

ADDITIONAL INFORMATION PROVIDED BY INSPECTOR

Start Time of Inspection 9:00 AM, PM, End Time 9:57 AM, PM

Temp. 60 Weather Cloudy, Clear, Raining, Other _____

Un-Occupied at the time of inspection, Occupied, (when home is occupied no furniture is moved, some areas cannot be seen or inspected)

Charge \$250.00 Payment Method: Check #3323, 3324 Cash/Cash App Yes, No,
Card , Paid Yes, No, Zelle PO#

No warranty, condition of the house on date of inspection. Claims limited to amount of inspection charge.

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I. STRUCTURAL SYSTEMS

A. Foundations

Type of Foundation(s): Slab-on-grade, Pier and Beam,
 Monolithic Slab, Other

Comments: Functioning as intended.

Craw space accessible? Yes, No, N/A

Method used to inspect craw space: _____

B. Grading & Drainage

Comments: _____

C. Roof Covering Materials

Types of Roof Covering: 3-Tab/ 20 year or 30 year, 90#
Rolled, Wood/Cedar, Tile, Slate, Metal, T-Loc,
Built-Up,

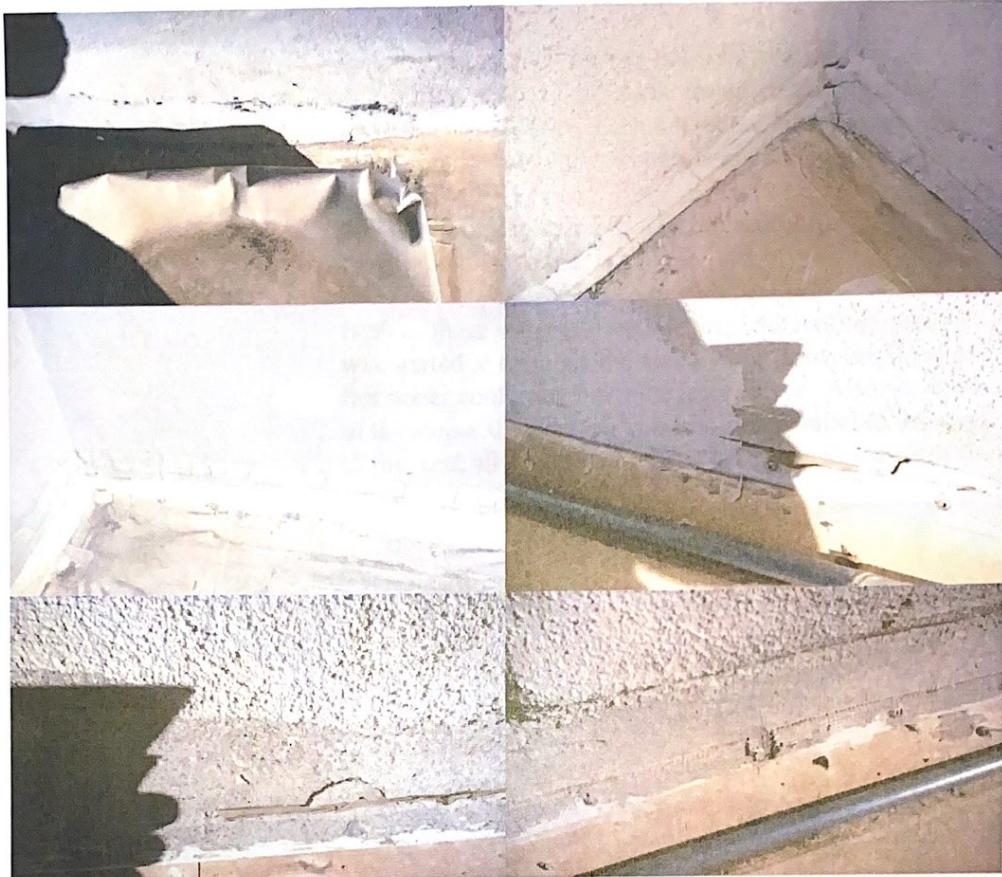
Other (Plastic Roof Covering) _____

Viewed From: on Roof, Ground, Other _____

Comments: 1. Damage and/or gaps around the edge flashing on the
walls is allowing water into the wall system.

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2. Old roofing was not removed before new roofing material was installed.



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3. Standard roofing installation was not followed:

A. Roofing material should be installed starting at the low end of the roof. Then, each additional layer is installed higher on the roof and will then drain on to the lower material.

B. The roofing material should run accost the (perpendicular) to the roof slope.

Both of these standard was not used, the roofing material was started at the high end and layered down the slope so that water could run under the lower layer. Also, on some of the slopes the material was installed parallel to the slope of the roof, allowing water under the edges to seep into the house.



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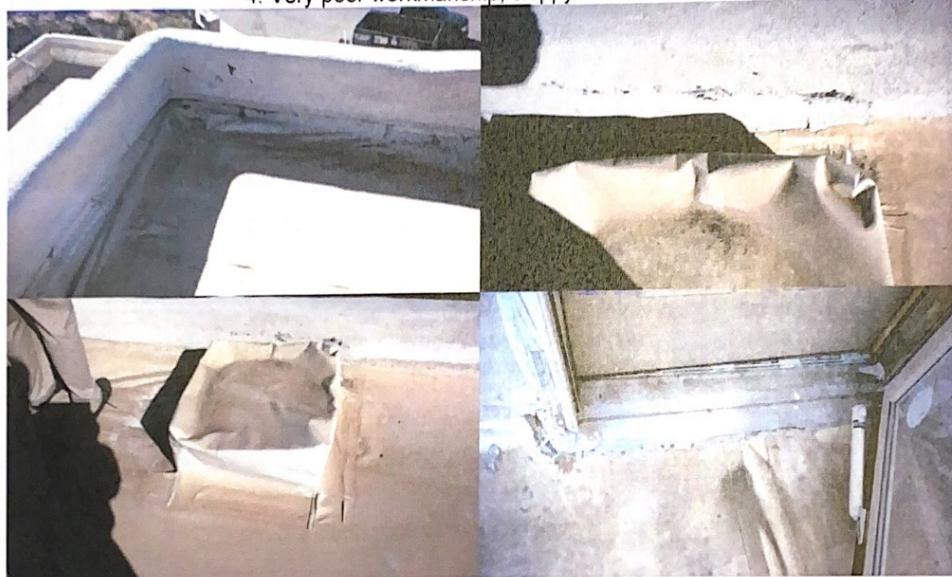
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3. Vent pipes and Air vents were covered over, trapping moisture in the house.



4. Very poor workmanship, sloppy.

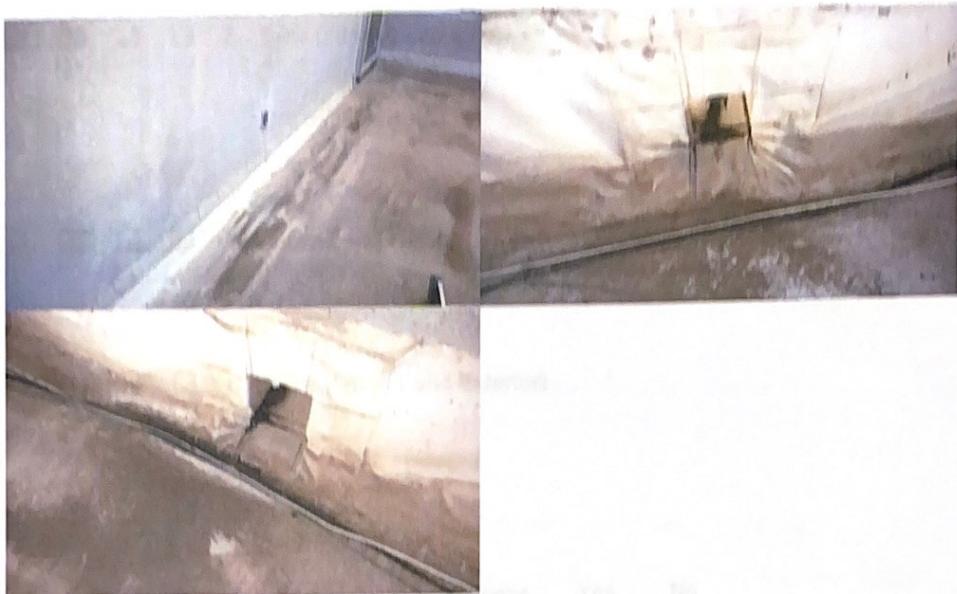


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Evidence of Previous Repairs Yes, No, N/A

D. Roof Structure and Attic

Viewed From: On Roof, Inside Attic, No attic available

Approximate Average Depth of Insulation: inches.

Approximate Average Thickness of Vertical Insulation: inches,

N/A

Comments:

Proper Ventilation of roof and attic Yes, No

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E. Walls (Interior and Exterior)

Comments:

F. Ceilings and Floors

Comments:

G. Doors (Interior and Exterior)

Comments:

H. Windows

Comments:

Missing or Damaged Screens ___ Yes, ___ No

Functional Emergency Openings in Bedrooms ___ Yes, ___ No

I. Stairways (Interior and Exterior)

Comments:

J. Fireplace/Chimney

Comments:

Gas Log Only ___ Yes, ___ No, ___ N/A

K. Porches, Balconies, Decks and Carports

Comments:

L. Other _____

Comments:

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II. ELECTRICAL SYSTEMS

A. Service Entrance and Panels

Comments:

AFCI present: ___ Yes, ___ No (Arc Fault Circuit Interrupter, used for fire protection)

Service From: ___ Overhead, ___ Underground

Visible wiring type: Service: ___ Copper, ___ Aluminum

Feeders: ___ Copper, ___ Aluminum

Appropriate connections? ___ Yes, ___ No

B. Branch Circuits, Connected Devices and Fixtures

Type of Wiring: ___ Copper, ___ Aluminum, ___ Other

Comments:

GFCI Lacking in: ___ Bathrooms, ___ Kitchen, ___ Garage, ___ Outside,

___ Basement/Craw Space, ___ Laundry/Utility, ___ Wet Bar. (Ground Fault Circuit Interrupter, for shock protection)

Smoke Alarms:

Working, ___ Yes, ___ No

Present in All Bedrooms, ___ Yes, ___ No

Present outside Bedrooms, ___ Yes, ___ No

Present on other floors, ___ Yes, ___ No, ___ N/A

C. Other _____

Comments:

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III. HEATING, VENTILATION AND AIR CONDITIONING SYSTEMS

A. Heating Equipment

Type of System: Forced air, Wall Units, Base board,
other

Energy Source: natural gas, Electric, other

Comments:

There is rust inside the heat exchange, have unit checked by an
HVAC company for CO leaks.

The unit was not on at the time of inspection could not check
operation.

B. Cooling Equipment:

Type of System: Evaporative Cooler,
 One Speed, Two Speeds
 Copper, Plastic (Water Line)
 Refrigerated Air
 Other

Comments:

The unit was not on at the time of inspection could not check
operation.

Winterized

C. Duct System, Chases, and Vents

Comments:

D. Other _____

Comments:

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IV. PLUMBING SYSTEM

A. Plumbing Supply, Distribution System and Fixtures

Location of water meter: Street, Front of House, Back of House,

Side of House, Allie, Other

Location of main water supply valve: Water Meter, In House, Garage

Static water pressure reading: PSI

Less Than 40, Greater Than 80

Type of Supply piping material: Copper, CPVC, Plastic,

Other

Comments:

B. Drains, Wastes, Vents

Type of Drain piping Material: PVC, Copper, Metal,

Other

Comments:

C. Water Heating Equipment

Energy Source: Natural Gas, LP Gas, Electric, Other

Capacity: 20, 30, 40, 50, Other (Gallons)

Comments:

T & P Valve working Yes, No (Temperature and Pressure Relief Valve)

Gas shut off type (Watts 210)

D. Hydro-Massage Therapy Equipment

Comments:

E. Gas Distribution Systems and Gas Appliances

Location of gas meter: Front, Right side, Left side,

Back yard, Other

Type of gas distribution piping material: Black Pipe, Flex/ CST,

Other

Comments:

F. Other _____

Comments:

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V. APPLIANCES

A. Dishwashers

Comments:

B. Food Waste Disposers

Comments:

C. Range Hood and Exhaust Systems

Comments:

_____ Built into Microwave Oven

D. Ranges, Cooktops, and Ovens

____ Natural Gas, ____ LP Gas, ____ Electric

____ Tip Protection ____ Yes, ____ No, ____ N/A

350° test of Oven = ____, Pass ____, Fail ____

Comments:

E. Microwave Oven

Comments:

F. Mechanical Exhaust Vents and Bathroom Heaters

Comments:

____ Fan present, Operating ____ Yes, ____ No

____ Heater present, Operating ____ Yes, ____ No